

1418402 (Migration) [2015] AATA 3596 (5 November 2015)

DECISION RECORD

DIVISION:	Migration & Refugee Division
REVIEW APPLICANT:	Mr Van Toan Bui
VISA APPLICANTS:	Ms Thi Nhin Nguyen Mr Nguyen Tan Nhat Le Mr Nguyen Tan Tai Le Miss Nguyen Thu Loi Le
CASE NUMBER:	1418402
DIBP REFERENCE(S):	OSF2014/027559
MEMBER:	Hugh Sanderson
DATE:	5 November 2015
PLACE OF DECISION:	Sydney
DECISION:	The tribunal affirms the decision not to grant the visa applicants Prospective Marriage (Temporary) (Class TO) visas.

Statement made on 05 November 2015 at 10:11am

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of decisions made by a delegate of the Minister for Immigration to refuse to grant the visa applicants Prospective Marriage (Temporary) (Class TO) visas under s.65 of the *Migration Act 1958* (the Act).
2. The visa applicants applied for the visas on 8 April, 2014. At the time the visa application was lodged, Class TO contained only one subclass: Subclass 300 (Prospective Marriage). The criteria for a Subclass 300 visa are set out in Part 300 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
3. The delegate refused to grant the visas on 22 October, 2014 on the basis that the first named visa applicant did not satisfy cl.300.216 and cl.300.221 of Schedule 2 to the Regulations because the delegate was not satisfied that the parties genuinely intended to live together as spouses at the time of the application or at the time of the decision.

BACKGROUND

4. The review applicant was born in Vietnam and is currently 47 years old. He became an Australian citizen on 25 November, 1992. His parents and eight siblings reside in Australia. He has two children from a former relationship, a daughter Kim Phung currently 27 years old and a son Duc Duy currently 26 years old.
5. The review applicant previously sponsored Thi Ngoc Hanh Tran for a Prospective Marriage visa which was granted to her after a review to the tribunal (differently constituted) after her application was initially refused by the department. The review applicant married Ms Tran on 27 April, 2006. The review applicant claimed they separated after she was granted the subclass 801 Partner (Residence) visa and were divorced on 21 June, 2010. There were no children of that relationship. The review applicant claimed that his marriage breakdown was caused by Ms Tran being unfaithful to him which led to many arguments.
6. The first named visa applicant (hereinafter the visa applicant) is a citizen of Vietnam and is currently 41 years old. Her mother and four siblings continue to live in Vietnam. She was previously married to Ngoc Xuan Le who died on 20 October, 2002. There are three children of that relationship, the second named visa applicants, currently aged 19, 16, and 13 years old.
7. In statements provided to the department, it was claimed that the parties were introduced by mutual friends, Linh and Tien in April 2013 and in person for the first time when the review applicant travelled to Vietnam in June 2013. The review applicant then proposed marriage to the visa applicant a few months after first meeting and he returned to Vietnam in December 2013 to spend time together and take part in an engagement ceremony there on 29 December, 2013. They claimed that they wanted to be married and live together in Australia.
8. Since being first introduced to each other, the review applicant has travelled out of Australia on the following occasions:
 - From 22 June, 2013 to 6 July, 2013; and
 - From 22 December, 2013 to 30 January, 2014;

9. The movement records for the review applicant's former wife's sister, Thi Ngoc Huong Tran, show that she has travelled out of Australia since 2013 on the following occasions:
- From 22 June, 2013 to 15 July, 2013; and
 - From 22 December, 2013 to 30 January, 2014;
10. Various documents were provided to the department by the applicant in support of the application. The department conducted an interview with the visa applicant. The delegate who considered the application noted the following issues:
- There was little information in support of the financial aspects of the relationship;
 - There was little information which would indicate the parties had established a household together and the review applicant's movement records indicated that he had spent little time with the visa applicant;
 - Photos had been provided of the parties together and that their engagement ceremony, however, little information had been provided as to the social aspects of the relationship;
 - It was claimed that none of the review applicant's family attended the engagement ceremony with it being claimed that they were all too busy;
 - The inception of the relationship appeared to have been particularly quick with limited information provided as to the development of that relationship;
 - Despite claiming to be in regular communication with each other, when interviewed the applicant demonstrated only a limited knowledge of the review applicant, including the fact that:
 - she did not know where the review applicant was born;
 - she did not know what relationship the review applicant had to Mr Linh who it was claimed introduced them;
 - she was not able to identify any friends of the review applicant or where he was working;
 - she did not know of any recent holidays by the review applicant;
 - she did not know the prior address of the review applicant despite claiming to be in a relationship with him at the time he moved;
 - she did not know the current housemates or landlord of the review applicant;
 - she did not know details of the review applicant's family in Australia; and
 - she did not know what social activities the review applicant engaged in; and
 - departmental records showed that the sponsor had travelled with another person, the review applicant's former sister-in-law, between 2002 and 2014 with that person declaring she had the same residential address as the review applicant since 2006.
11. Based on these issues, the delegate was not satisfied that the parties saw their relationship as a long term one or that they consider their relationship as exclusive or that they were in a genuine and continuing long-term relationship. Accordingly, the delegate found that at the time of the application they did not meet the criteria in cl.300.216 or the time of decision criteria in cl.300.221 and refused the application.

INFORMATION TO THE TRIBUNAL

12. The applicant provided various documents in support of the application to the tribunal. This included the following:
 - Photos of the parties together in Vietnam;
 - Five money transfers from the review applicant to the visa applicant;
 - Telephone accounts;
 - Statutory declarations by the review applicant's family, all stating that they believed the relationship is genuine and they were unable to travel to attend the engagement party; and
 - Statutory declaration from Thi Ngoc Huong Tran.
13. The statutory declaration from Thi Ngoc Huong Tran made the following claims:
 - Her relationship with the review applicant is close and he considers her an elder sister;
 - Despite the review applicant divorcing her sister, they have maintained a close relationship with each other as friends;
 - She visited Vietnam in June 2013 to visit her family and to meet the visa applicant;
 - She travelled with the review applicant to Vietnam in December 2013 to attend his engagement celebrations but could not attend because she was ill; and
 - She believed the relationship between the visa applicant and the review applicant was genuine.
14. The review applicant appeared before the tribunal on 2 November, 2015 to give evidence and present arguments. The tribunal also received oral evidence from the visa applicant. The tribunal hearing was conducted with the assistance of an interpreter in the Vietnamese and English languages. The review applicant was represented in relation to the review by his registered migration agent who attended the hearing.
15. At the start of the hearing, the tribunal explained to the applicant the process under s.359AA of the Act. The tribunal explained to the applicant that it would be putting information to him which the tribunal considers would be the reason, or a part of the reason, for affirming the decision under review. It would explain what this information was, why it was relevant and then invite the applicant to comment on or respond to the information. If he needed additional time to comment on or respond to the information he could seek an adjournment.

THE EVIDENCE OF THE REVIEW APPLICANT

16. The review applicant said that he had been living in rented accommodation in Villawood for about 2 ½ years. He was sharing with two other Vietnamese men. He said that before then he was living with Ms Tran in Yagoona. The review applicant gave a confused answer as to why he decided to move out of the Yagoona property. He initially said that he moved out to the other property because he was expecting his wife to arrive from Vietnam and wanted a proper place for her. The tribunal noted that as he went to live with two Vietnamese men whom he did not know this would not be inappropriate place for the visa applicant and her children to live. He then said that he did not want to live with Ms Tran any more, but could not give any reason why this was so.
17. The review applicant said that he was working at Victa Mowers. He said that he had worked there for about 20 years and had long service leave owing to him. He said that he last had a

holiday when he spent several days with Ms Tran, her daughter and her niece and her boyfriend on the Gold Coast. He said that he had spoken to the visa applicant about this and she was aware of his holiday with Ms Tran to the Gold Coast.

18. The tribunal asked the review applicant why it was he had not travelled to Vietnam since travelling there in December 2013 to spend any time with the visa applicant. He said that he was not able to get any holidays. The tribunal noted that this was unlikely as he would be receiving at least four weeks holiday each year and would also have long service leave. The review applicant said that he took two weeks off in June 2015 as there was an office close-down. He said that he just stayed at home in Sydney and did fishing. He said that he did not go to Vietnam because it was too expensive.
19. The review applicant said that both he and the visa applicant were Buddhist, although neither of them ever attended the temple to pray and just prayed at home.
20. The review applicant claimed that each time he had visited Vietnam in 2013 he stayed with the visa applicant in her home. He said that they only shared bed together after their engagement party.
21. The tribunal noted the money transfers provided by the applicant to the tribunal. The tribunal asked the applicant why he had sent the money to the visa applicant. He said that he sent this money to her to help pay for the engagement ceremony. The tribunal noted that the money was sent to her on 8 July, 2013, two days after he had returned from Vietnam, and 15 July, 2013, 13 days after he had returned from Vietnam. The tribunal noted that this money was sent to her prior to the review applicant claiming to have proposed marriage to the visa applicant. This made his answer implausible.
22. The review applicant said that it was because he loved the visa applicant and he wanted to give her some money after he had visited Vietnam and he got a tax return. The tribunal noted that the other money transfers were made at specific times when the department was assessing the application and the most recent was done five days after the tribunal had invited the applicant to attend the hearing. This gave rise to concern that the money transfers were contrived for the purposes of immigration purposes and were not an indication of any genuine financial support of the visa applicant by the review applicant. The review applicant said that he sent the money because he loved the visa applicant. He said that he sent the money in October for the visa applicant's children's birthday. The tribunal noted that he had not sent any money previously for the birthday and had not sent anything to the visa applicant since prior to the department's decision. The review applicant again said that he sent the money to the visa applicant because he loved her. He said that he sent the money as gifts. He said that she had never asked for the money but he just wanted to support her.
23. The tribunal asked the applicant if he knew who The Huan Nguyen was. He said that it was Ms Tran's boyfriend, but he knew nothing more about him. He said that Ms Tran had only told him about Mr Nguyen recently. When asked to give a more precise time when he first found out about Ms Tran's boyfriend, he said that it was only a month ago when they he had gone on a holiday with Ms Tran to the Gold Coast.
24. The review applicant said that on their last trip to Vietnam in December 2013 Ms Tran had stayed in Ho Chi Minh City throughout the time that they were in Vietnam. He said that she did not travel at any time to where the visa applicant lived and she did not attend the engagement party because she got sick. He said that the visa applicant met Ms Tran on only one occasion in Ho Chi Minh City when he was returning to Australia.

25. The tribunal referred to the process under s.359AA of the Act set out above. The tribunal referred to an application from Mr Nguyen sponsored by Ms Tran for a Prospective Marriage visa in which it was claimed Ms Tran had met Mr Nguyen when travelling to Vietnam in June 2013 and that their relationship developed after then and she returned to Vietnam in December 2013 and had an engagement party on 6 January, 2014.
26. This information was relevant as it indicated that Ms Tran was involved in a similar process to that which the review applicant was with the visa applicant and that the review applicant appeared unaware of Ms Tran's claimed relationship even though stating that she was like a sister to him and that it was claimed she had travelled to Vietnam in December 2013 to attend his engagement party, when she was taking part in an engagement party held the week later. Further, Mr Nguyen lived in the same area as the visa applicant and Ms Tran claim to have travelled spent time there when she had travelled to Vietnam. This called into question the credibility of all the evidence being presented to the tribunal had also raised a question that both claimed relationships were contrived for the purposes of immigration and not genuine relationships.
27. The review applicant said that he did not know what Ms Tran had done and he was only concentrating on his own relationship. The review applicant could give no other explanation as to the coincidence of the similar claims and circumstances in Ms Tran's application and that of his own.
28. The review applicant said that if the visa applicant was granted the visa she would learn English and then get a job. She said that they would not have children because they are both too old. He said that if the visa was refused he would go to Vietnam and marry the visa applicant. He said that he has not done this yet as he cannot take time off work. The tribunal noted that as he received four weeks holiday each year and had long service leave owing to him he would have sufficient time to be able to take leave to visit the visa applicant in Vietnam. He said that he did not.

EVIDENCE OF THE VISA APPLICANT

29. The visa applicant said that the review applicant was living in Villawood with two other Vietnamese men. She said that before that he was living in Yagoona with his sister-in-law. She said that the review applicant sometimes see each other or spend time with each other, but have not done anything special together. She said that they had not gone away together and the last time they had travelled together, either in Australia or internationally, was when they travelled together to Vietnam in December 2013.
30. The visa applicant said that the review applicant gets two or three weeks holiday each year. She said that he had not taken any holidays or had any time off work for the last 12 months. The tribunal noted that he had not travelled to Vietnam since December 2013. The visa applicant said that the review applicant was planning to travel to Vietnam in December 2015. She said that he was trying to save money.
31. The visa applicant said that both she and the review applicant are Buddhists. She said that she sometimes goes to a temple to pray. She said that they had not attended a Buddhist temple together in Vietnam.
32. The visa applicant said the review applicant sent the money to help her children with their study. She said that she did not ask him to send money. The tribunal noted that the review applicant sent her money immediately after he returned from Vietnam after claiming to have spent time with her. The visa applicant said that he did this as he did not have much money in Vietnam and so sent her money after he returned to Australia. The tribunal indicated this was not plausible. The visa applicant claimed that the review applicant left Australia in a

hurry and so forgot to take much money with him and he did not have enough time to plan for the trip.

33. The tribunal asked the visa applicant if she knew who The Huan Nguyen was. She said that she knew nothing about this person.
34. The visa applicant said that she met Ms Tran in Saigon at the airport. She said that she had not met her at any other time. She said that she was aware that Ms Tran had a boyfriend as the review applicant had told her this at the time they were engaged in December 2013.

FURTHER EVIDENCE OF THE REVIEW APPLICANT

35. The tribunal again referred to the process under s.359AA of the Act. The tribunal noted a number of inconsistencies in the information provided by the visa applicant. The tribunal noted that the visa applicant was not aware that the review applicant had in the last month gone on a holiday to the Gold Coast with Ms Tran. She was also unaware that he had two weeks off work in June 2015. This was relevant as it indicated an absence of knowledge of activities in the review applicant's life which would be expected to be known if the parties were in a genuine relationship and communicating with each other. The review applicant said that she probably just forgot.
36. The tribunal referred to the fact that the visa applicant said that she would attend a Buddhist Temples sometimes, while the review applicant said that she never attended. This was relevant as it indicated a lack of knowledge of important part in the visa applicant's life. The review applicant said that maybe the visa applicant now goes to a Buddhist Temple because she was worried about what was happening.
37. The tribunal referred to the evidence given by the visa applicant which was that the review applicant had told her when they were engaged in December 2013 that Ms Tran had a boyfriend whereas the review applicant claimed that he had only first known about Ms Tran's boyfriend about a month ago when they had gone on a holiday together to the Gold Coast. The review applicant said that he was just estimating when he found out about Ms Tran's boyfriend and he was not sure. The tribunal indicated that this claim was implausible as the review applicant had said that he only found out about the boyfriend recently, about a month ago, and not in December 2013. Further, if the relationship between the review applicant and Ms Tran was such that they considered each other brother and sister he would be aware of this. The review applicant said that he did not want to be judged on what Ms Tran did and to concentrate only on the relationship with the visa applicant.
38. For the following reasons, the tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

39. The issue in the present case is whether the parties genuinely intend to live together as spouses is defined in s.5F of the Act. This, in part, requires the parties to be in an exclusive, genuine and continuing relationship.

DO THE PARTIES GENUINELY INTEND TO LIVE TOGETHER?

40. Clause 300.216 requires that at the time of application 'the parties genuinely intend to live together as spouses'. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where those two people are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is recognised as valid for the purposes of the Act; there must be a mutual commitment to a shared life as

husband and wife to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In considering an application for a Prospective Marriage (Temporary) (Class TO) visa, the tribunal may have regard to the considerations set out in r.1.15A(3) for spousal relationships: r.1.15A(4). Whilst it is not appropriate to consider whether the parties are spouses at the time of application or time of decision, an investigation of the parties' intentions with regard to the definition of spouse in legislation may assist in determining the parties' aspirations.

41. Having regard to the considerations for a spousal relationship, and the degree to which these factors may be applied to determine a future intention, the tribunal makes the following findings.

FINANCIAL ASPECTS OF THE RELATIONSHIP

42. The review applicant provided to the tribunal five money transfers from him to the visa applicant as evidence in support of the financial aspects of the relationship. The details of the money transfers are as follows:
- \$100 sent on 8 July, 2013, two days after the review applicant returned from Vietnam after meeting the visa applicant for the first time and spending less than two weeks with her;
 - \$1,000 sent on 15 July, 2013, seven days after the first money transfer;
 - \$250 sent on 29 August, 2014, less than a month prior to the interview with the department; and
 - \$500 sent on 17 October, 2015, five days after the tribunal invited him to attend a hearing.
43. No plausible explanation was given as to why the first two money transfers were made so soon after the review applicant had returned from Vietnam. The review applicant claimed that he did this because he loved the visa applicant. He claimed the second payment was because he received a tax return, however, no evidence of this was provided. He claimed that he had sent the money to help pay for the engagement ceremony, however, he had claimed previously that he had only proposed marriage to the visa applicant after this date, claiming in his statement that it was a few months into his relationship after he had returned from Vietnam that he proposed to the visa applicant.
44. It was claimed that the payment in October 2015 was a gift for the sponsor's three children whose birthdays are between 27 October and 15 November. There is no evidence, however, that the review applicant provided any gift to the sponsor's children the year before after he had proposed marriage to the visa applicant.
45. The visa applicant also provided inconsistent and implausible explanations for the payments. She claimed that the payments were made to support her children. She claimed the payments after the review applicant's first trip to Vietnam were because he did not take enough money with him because that trip had been arranged so suddenly that he did not remember to take enough money.
46. When considering the financial aspects of the relationship, the tribunal finds that the transfers of money have been contrived to support the claim that the financial aspects of the relationship indicate a genuine relationship and are not a genuine reflection of any such relationship. No transfers of money were made from August 2014 until October 2015, after the tribunal invited the applicant to attend the hearing. This would indicate that there was no

continuing financial relationship between the parties. The tribunal places no weight on those transfers as indicating a genuine relationship between the parties.

47. Overall there is little information which would indicate that the financial aspects of the relationship indicated genuine relationship or that they genuinely intend to live together as spouses.

NATURE OF THE HOUSEHOLD

48. The review applicant claims to have stayed with the visa applicant in her home on the two occasions that he has travelled to Vietnam since they were first introduced. This was for less than 14 days in June 2013 and for a period of just over a month commencing 22 December, 2013. The review applicant stated that he slept in a separate room to the visa applicant until after the engagement ceremony held on 29 December, 2013.
49. There is little information to corroborate the claims of the parties that they lived together in the same household. In light of the fact that the parties had lived in separate countries throughout their claimed relationship the tribunal places little weight on this aspect of the relationship to indicate that they genuinely intend to live together as spouses.

SOCIAL ASPECTS

50. The review applicant has travelled to Vietnam on two occasions since he claimed he was first introduced, by telephone, to the visa applicant. Photos were provided of the parties together in Vietnam and at the engagement ceremony. No friends or relatives of the review applicant attended the ceremony.
51. The review applicant provided statements from his family members, all stating that they were unable to attend the engagement ceremony but believe the relationship was genuine. The reasons given for not attending the engagement ceremony were that they were too old to travel or that they were too busy at the time. The fact that none of the review applicant's family attended the engagement ceremony, an important event in Vietnamese culture, undermines the claim that the parties genuinely intend to live together as spouses. The tribunal does not accept that such a significant event in Vietnamese culture that if the parties did genuinely intend to live together as spouses the applicant would not have made arrangements for the engagement ceremony to take place when at least some of his family would have been able to attend.
52. The review applicant claimed, and it is stated in Ms Tran's statement, that Ms Tran travelled with him to Vietnam in December 2013 "in order to attend his engagement celebrations to the (visa applicant) and give him support as his family could not return to Vietnam for the engagement party". Despite this, Ms Tran claimed that she could not attend the engagement ceremony as she fell ill. What was not stated by the review applicant or Ms Tran was that she claimed to have held an engagement ceremony for herself and Mr Nguyen on 6 January, 2014 whom she is now sponsoring for a subclass 300 Prospective Marriage visa. There is no evidence that Ms Tran was ill at any time over the time that she was in Vietnam and the circumstances of her activities there call into question the claims that she intended to attend the engagement ceremony of the parties but only did not do so because she was ill. The review applicant has described Ms Tran as like an older sister to him. That she did not attend the engagement ceremony after claiming to have specifically travelled with the review applicant to do so undermines the claims that the relationship is recognised by friends as being genuine or that the parties genuinely intend to live together as spouses.
53. The statements provided by the review applicant's family simply state that they believe the relationship is genuine. There is nothing in those statements which would explain why they

believe the relationship is genuine, if they have had any contact at all with the visa applicant or that they have any knowledge of her.

54. The photos provided by the review applicant support the claim that the parties have met the other in Vietnam and participated in an engagement ceremony which was attended by family members of the visa applicant. There is little further information which would indicate the social aspects of the relationship support a claim that the parties genuinely intend to live together as spouses.

COMMITMENT TO EACH OTHER

55. The parties claimed their relationship developed over a very short period of time. The parties claimed that they were first introduced to each other by telephone in April 2013. The review applicant then spent less than two weeks with the visa applicant in Vietnam when he travelled there on 22 June, 2013, travelling with Ms Tran. The review applicant claimed after talking with the visa applicant for a few months after his return he decided to propose marriage to the visa applicant and he returned to Vietnam to participate in engagement ceremony. He has not returned to Vietnam since then.
56. The fact that the parties relationship developed over a short period of time and the fact that the review applicant has not returned to Vietnam at any time since January 2014 calls into question the commitment the parties have to the relationship.
57. The review applicant provided his telephone records which indicate international telephone calls has made. Almost all of these telephone calls are to Vietnam and many of them are to the number provided by the review applicant for the visa applicant at the hearing.
58. In the department's decision, which the review applicant provided to the tribunal, it was noted that the visa applicant was unable to provide information as to various aspects of the review applicant's life which would have been expected if the parties were in a genuine relationship and genuinely intended to live together as spouses. This included information as to where the review applicant was born, his friends in Australia, details as to with whom he was living at that time and other aspects of his extended family's life.
59. At the hearing before the tribunal, the visa applicant was again unable to provide information as to various aspects of the review applicant's life. This included the fact that he had recently had a holiday on the Gold Coast with Ms Tran and other members of her family and that he had a two week holiday in June 2015 where he just stayed in Sydney. The review applicant explained this lack of knowledge by the visa applicant stating that she just forgot. The tribunal does not accept that if the parties maintained the level of communication that they claimed to have or that they had the level of commitment which would be expected in a genuine relationship where the parties genuinely intended to live together as spouses that the visa applicant would not be aware of these holidays of the review applicant, particularly when the holiday to the Gold Coast had only recently taken place and the review applicant was travelling with Ms Tran, the sister of his former wife who he had travelled with regularly on previous occasions.
60. The review applicant was also unaware that the visa applicant would attend a Buddhist Temple to pray. The review applicant explained this by claiming that she may have only recently started to do this as she was worried about the outcome of the current application. The tribunal finds that if the parties did genuinely intend to live together as spouses and were in a genuine relationship and communicated as they claimed, the review applicant would have been aware of this aspect of the visa applicant's life.

61. The last time the review applicant travelled to Vietnam was in December 2013 when the engagement ceremony took place. The review applicant said that he had not travelled again to Vietnam as he did not have holidays and was saving money for the parties' future together in Australia. The visa applicant claimed that it had been planned that the review applicant would travel to Vietnam in December 2015, however, no information was provided which would support this claim.
62. The review applicant acknowledged that he had worked for his current employer for 20 years and was entitled to long service leave, which he used when he travelled to Vietnam in December 2013. He also received four weeks holiday each year. He said that he took required two weeks holiday in June 2015, during which he stayed at home. He claimed the other holidays he took were just for a few days travelling with Ms Tran to the Gold Coast. There is no information before the tribunal which would indicate that the review applicant would not have had the financial resources available to be able to travel to Vietnam at any time over the almost 2 years since he participated in an engagement ceremony with the visa applicant to spend time with her. That he did not make any attempt to spend time with the visa applicant calls into question the commitment of the review applicant to the relationship and whether the parties genuinely intend to live together as spouses.
63. When considering the parties commitment to the relationship, there is little information which would support a finding that the commitment the parties had shown to each other would indicate the parties genuinely intend to live together as spouses.

OTHER RELEVANT ISSUES

64. The review applicant has maintained a close relationship with the sister of his former wife who he sponsored for a subclass 300 Prospective Marriage visa and subsequently a Partner visa. It was claimed that after his wife was granted the subclass 801 Partner (Residence) visa their relationship ended due to his wife's infidelity. Despite this, the review applicant travelled with his former wife's sister, Ms Tran, in June 2013 when he first met in person the visa applicant and in December 2013 when he returned to participate in an engagement ceremony with the visa applicant.
65. As indicated above, it was claimed by the review applicant and Ms Tran that they maintain a very close relationship with each other even though the review applicant's relationship with Ms Tran's sister has come to an end. They described themselves as being like brother and sister.
66. Despite having this purportedly close relationship with each other, the review applicant claimed to have been unaware that Ms Tran claimed to have met a person whom the review applicant described as her "boyfriend" at the time she travelled with him to Vietnam in June 2013. He also claimed to have been unaware that she participated in an engagement ceremony with him on 6 January, 2014, shortly after he had participated in his engagement ceremony with the visa applicant, with the reason why Ms Tran claimed she had travelled with the review applicant being to attend that ceremony.
67. The review applicant claimed that he only became aware that Ms Tran had a boyfriend was "recently". After being pressed by the tribunal he then clarified this by saying that he only found out during his holiday with her to the Gold Coast. This was inconsistent with the information provided by the visa applicant which was that the review applicant told her Ms Tran had a boyfriend at the time the review applicant was in Vietnam and the parties participated in an engagement ceremony.
68. The fact that the review applicant and Ms Tran claimed to have a very close continuing relationship with each other, which is further highlighted by the fact that the parties had

travelled overseas together and recently went on a holiday together to the Gold Coast, makes it implausible for the applicant to claim that he would not have been aware of such a significant event in Ms Tran's life of claiming to enter into a committed relationship with another man since June 2013 and participating in an engagement ceremony with him in January 2014, when the parties travelled together to Vietnam. The inconsistency in the information provided to the tribunal as to when the review applicant became aware of this information calls into question the credibility of the information the review applicant has provided to the tribunal and to the department.

69. The review applicant was also evasive and provided implausible answers when questioned as to why he moved out of the home he had been sharing with Ms Tran soon after he claimed to have started a relationship with the visa applicant. This included claiming that he moved out of the home with Ms Tran because he wanted to move into a home that would be suitable for the visa applicant, but he had moved into a home he was sharing with two Vietnamese men who he did not know. No plausible explanation was given by the review applicant as to why he moved out of Ms Tran's home at that time.
70. The tribunal has considered the circumstances of the parties and the claims made as to their relationship both individually and cumulatively. The tribunal has taken into account the evidence which has been presented by the parties to support a claim of the parties do genuinely intend to live together as spouses. This includes the fact that the parties participated in an engagement ceremony in Vietnam, the photos of the parties together in Vietnam, the money sent by the review applicant to the visa applicant and the telephone records.
71. The tribunal finds that this information is, however, outweighed by other factors which call into question the genuineness of the parties' relationship and whether they genuinely intend to live together as spouses. The very short period in which the parties claim their relationship developed, the limited time the parties have spent together after having been first introduced, the limited evidence of any social recognition of the relationship, and the lack of knowledge of significant aspects in each other's lives the parties displayed when interviewed by both the department and during the tribunal hearing all indicate that the parties did not have a degree of knowledge or understanding of each other which would be expected the parties genuinely intended to live together as spouses.
72. When considered as a whole, the tribunal is not satisfied that at the time of the application, or at the time of the decision, the parties genuinely intend to live together as spouses. Accordingly, the tribunal finds the criteria in cl.300.216 is not met.
73. For the reasons above, the tribunal finds the visa applicant does not satisfy the criteria for the grant of the visa. As the visa applicant does not satisfy the criteria for the grant of the visa, the decision to refuse the applications for the second named visa applicants must also be affirmed.

DECISION

74. The tribunal affirms the decision not to grant the visa applicants Prospective Marriage (Temporary) (Class TO) visas.

Hugh Sanderson
Member